

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

A.B.S., as surviving daughter of deceased)
ANTHONY L. SMITH, and a minor, by)
and through her next friend CHRISTINA)
WILSON,)

Plaintiff,)

v.)

BOARD OF POLICE COMMISSIONERS,)
ET AL.)

Defendants.)

Case No.: 4:12-cv-00202-JCH

PLAINTIFF'S MOTION FOR SANCTIONS

COMES NOW Plaintiff A.B.S., and for her Motion for Sanctions directed to Defendants pursuant to Federal Rule of Civil Procedure 37 states as follows:

1. On July 5, 2012, Plaintiff propounded Plaintiff's First Request for Production of Documents on Defendants.
2. On July 6, 2012, Plaintiff propounded Plaintiff's First Set of Interrogatories on Defendants.
3. On August 15, 2012, Defendants issued to Plaintiffs their Answers and Objections to Plaintiff's Interrogatories and Responses and Objections to Plaintiff's Request for Production of Documents.
4. On January 2, 2013, Plaintiff issued correspondence to Defendants in a good faith attempt to resolve the Objections to Plaintiff's Interrogatories and Request for Production of Documents.

5. On January 28, 2013, Plaintiff filed a Motion to Compel, and a Hearing on same was set for March 1, 2013.

6. This Court entered its Order on March 1, 2013 whereby Defendants were ordered to comply with Plaintiff's Motion to Compel.

7. Plaintiff has held multiple teleconferences with Defendants in a continuing good faith effort to obtain the items ordered to be produced by the Court on March 1, 2013.

8. On multiple occasions including March 8, April 5, and April 8, Plaintiff issued email correspondences to Defendants in a continuing good faith attempt to obtain the items ordered to be produced by the Court on March 1, 2013.

9. On March 29, 2013, Plaintiff issued a correspondence by U.S. Regular Mail Defendants in a good faith attempt to obtain the items ordered to be produced by the Court on March 1, 2013 and providing notice to Defendants of their intent to file a Motion for Sanctions.

10. The March 29, 2013 correspondence included a deadline of April 5, 2013 for production of the documents before Plaintiff would file a Motion for Sanctions.

11. On April 5, 2013, Defendants notified Plaintiff of their intent to seek a Protective Order before producing the documents referred to in the Court's March 1, 2013 Order

12. Defendants did not provide notice of their intent to seek protective order during the hearing on March 1, 2013 or at any time prior to April 5, 2013.

13. Defendants have failed to comply with the Court's Order to provide discovery which was entered on March 1, 2013.

14. Federal Rule of Civil Procedure 37 states that "If a party...fails to obey an order to provide or permit discovery,...the court where the action is pending may issue further just orders. They may include the following: (i) directing that the matters embraced in the order or

other designated facts be taken as established for purposes of the action, as the prevailing party claims; (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence; (iii) striking pleadings in whole or in part; (iv) staying further proceedings until the order is obeyed; (v) dismissing the action or proceeding in whole or in part; (vi) rendering a default judgment against the disobedient party; or (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.” F.R.C.P. 37(b)(2)(A)

WHEREFORE, Plaintiff requests that Defendants pleadings be stricken, that the Court enter a judgment by default against Defendants and for such other and further relief as the Court deems just and proper.

KODNER WATKINS KLOECKER, LC

By: /s/ R. Jackson Horan, Jr.
ALBERT S. WATKINS, LC #34553MO
MICHAEL D. SCHWADE, #60862MO
R. JACKSON HORAN, #65374MO
7800 Forsyth Boulevard, Suite 700
Clayton, Missouri 63105
(314) 727-9111
(314) 727-9110 Facsimile
albertswatkins@kwklaw.net
mschwade@kwklaw.net
jhoran@kwklaw.net

CERTIFICATE OF SERVICE

I hereby certify that on this the 9th day of April 2013, a true and correct copy of the foregoing document was electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic filing to all counsel of record.

Dana Walker Tucker
Chief Counsel, Eastern Region
Office of the Missouri Attorney General
P.O. Box 861
St. Louis, Missouri 63188
Dana.Tucker@ago.mo.gov